IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 573/2004.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 24th November, 2006

Heard Shri S. A. Bari, learned counsel for the appellants.

2. This appeal is directed against the Judgment and decree dated 20th March, 2004 passed by the 7th Ad hoc Additional District Judge, Nagpur in Regular Civil Appeal No. 997/2000 partly allowing the appeal against the Judgment and decree dated 28.9.2000 passed by the 5th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 893/96.

3. Waman Khobragade the original plaintiff filed the above referred suit against the defendants- appellants seeking declaration that he is the owner of the suit property and further sought recovery of possession and damages. The respondents are the legal representatives of the original plaintiff.

4. It was the case of the original plaintiff that he was the exclusive owner of the suit plot by virtue of lease granted to him by Nagpur Improvement Trust for a period of 30 years from 27.3.1972. According to the plaintiff, in June 1987 he allowed the defendants to reside in the suit property in which there was a shed and three shops. After some time, the defendants took possession of the shops and shed and continued to be in illegal and unauthorised possession of the shed as well as the shops in spite of asking them to vacate the shade and shops.

5. The defendants contested the suit inter alia contending that they had made payment to the Nagpur Improvement Trust and there was an oral agreement on 16.2.1972 for sale of the suit property which was reduced into writing on 1.11.1975. According to the defendants, they were ready and willing to execute the sale-deed in respect of the suit plot.

6. The trial Court upon appreciation of the evidence led by the parties granted declaration of ownership in favour of the plaintiff and further directed the defendants to hand over the possession of the suit property. The trial court also granted damages. The counter claim filed by the defendants against the plaintiff seeking transfer of the suit plot was rejected by the trial court. In appeal preferred by the defendants- appellants the lower

appellate court partly allowed the appeal and declared that the plaintiff is the lease holder of the suit plot and directed the defendants to hand over the possession of the three shops and the shed to the plaintiff. The lower appellate court rejected the payer for damages but ordered inquiry into mesne profits under Order 20 Rule 12 of the Code of Civil Procedure.

7. Mr. Bari, the learned counsel for the appellant submitted that the lower appellate court erred in granting declaration that the plaintiff was the lease holder of the suit plots after holding that the findings given by the trial court were not proper. He further submitted that the trial court as well as the lower appellate court ought to have granted counter claim of the defendants inasmuch as the defendants had established agreement between the original plaintiff and the defendants in respect of the suit plot. He submitted that the lower appellate Court misconstrued the evidence led by the parties and gave findings which are totally perverse. He further urged that the defendants had established their possession from 1972 and,therefore, both the courts erred in granting relief of possession in favour of the plaintiff.

8. Having considered the submissions made by the learned counsel for the appellants and having perused the Judgments passed by both the courts below, I find no

infirmity in the Judgment given by the lower appellate Court. The plaintiff had proved that he was a lease holder in respect of the suit plot by producing documents of lease executed between him and the Nagpur Improvement Trust which clearly establishes the lease of the suit plot in favour of the plaintiff. Once it is accepted that the plaintiff is a lease holder of the suit plot the plaintiff could not transfer the ownership right in favour of the defendants. Therefore, the entire defence of the defendants that they had paid directly to the Nagpur Improvement Trust and, therefore, they are entitled to the suit plot is without any basis. In so far as the agreement of sale is concerned, the lower appellate Court rightly held that there could not have been such agreement inasmuch as the plaintiff himself was the lease holder and as such could not have sold the suit plot. The lower appellate court also rightly held that the defendants have neither proved oral agreement in the year 1972 nor written agreement purported to have been executed in the year 1975 since no evidence was produced to prove both these agreements. Once the plaintiff is successful in proving his title to the suit plot by way of lease and the defendants did not prove any better title in respect of the suit plot or shed and the shops existing therein the decree for possession passed by the lower appellate court cannot be faulted. Mere permissive possession of the defendants would not give them any right to claim title to the suit plot or any

shed/ shops existing therein. Therefore, the lower appellate court, in my opinion, rightly passed the decree for possession and ordered inquiry under Order 20 Rule 12 of the Code of Civil Procedure. No fault can be found with the findings given by the lower appellate Court. The decree passed by the lower appellate Court is legal and proper and, therefore, no interference is called for with the said decree in second appeal. No substantial question of law is involved in this appeal. Hence, the appeal is summarily rejected.

C.A. No. 7731/04:

In view of the dismissal of the appeal, nothing survives in this application. Hence, the application is dismissed as infructuous.

Judge

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